

**82-1102**

No.

Supreme Court, U.S.  
FILED

DEC 30 1982

ALEXANDER L. STEVAS  
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1982

---

JOSEPH MICHAEL GREY,  
Petitioner

v.

CITY OF PHILADELPHIA,  
PHILADELPHIA POLICE DEPARTMENT,  
ROLAND LUCIER, THOMAS WHALEN,  
AND PERRY PRESSMAN,  
Respondents

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PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

JOSEPH M. GREY,  
PETITIONER: PRO SE  
2447 East Letterly Street  
Philadelphia, Pa. 19125  
Telephone: (215) 673-2999

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## **QUESTION PRESENTED**

Whether the plaintiff-petitioner can be heard at a trial under original jurisdiction in the Federal District Court, due to the fact he was unlawfully arrested and detained by 3 uniformed policemen-defendants who were employed by the defendant, City of Philadelphia, who deprived him of his Fourth Amendment rights, pursuant to the jurisdictional statement contained in 28 U.S.C. § 1343 (3) as stated in his amended complaint which was granted by the District Court?

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The Petitioner, Joseph Michael Grey, respectfully prays that a Writ of Certiorari be granted to review the judgment of the Third Circuit Court of Appeals entered in this proceeding on October 15, 1982.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Third Circuit, denying the Petition for Rehearing En Banc, (unpublished), appears in the Appendix at A-14. The judgment of the United States Court of Appeals for the Third Circuit, affirming the judgment of the United States District Court for the Eastern District of Pennsylvania, (unpublished), appears in the Appendix at A-12. The judgment of the United States District Court for the Eastern District of Pennsylvania, granting defendants' motion for summary judgment and dismissing plaintiff's complaint, (unpublished), appears in the Appendix at A-11.

## JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254 (1). The date of the judgment of the Third Circuit Court of Appeals denying the Petition for Rehearing En Banc, sought to be reviewed, was on October 15, 1982 which was also the date of entry on the official docket.

## CONSTITUTIONAL PROVISIONS AND STATUTES

The text of the Constitutional Provisions and Statutes cited below can be found in the Appendix at A-16 and A-17.

U.S. Constitution: Fourth Amendment  
U.S. Constitution: Fourteenth Amendment  
28 U.S.C. § 1331  
28 U.S.C. § 1343 (a) (3)  
Federal Rules of Civil Procedure: Rule 12 (b)  
(6)

## STATEMENT OF THE CASE

BASIS FOR FEDERAL JURISDICTION IN THE  
UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

Title 28 U.S.C. § 1343(a)(3) provides that:

"[T]he district courts shall have original jurisdiction of any civil action authorized by the law to be commenced by any person...  
(3) To redress the deprivation, under color of any State law, ...of any right, privilege or immunity secured by the Constitution of the United States..."

The Fourth Amendment to the U.S. Constitution provides that:

"[T]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . ."

In this case, the petitioner's Fourth Amendment rights were violated by 3 uniformed Philadelphia policemen, and he sought monetary damages for such violation in the Federal Court pursuant to 28 U.S.C. § 1343(a)(3), since the policemen acted under color of State law.

FACTS MATERIAL TO THE  
CONSIDERATION OF THE  
QUESTION PRESENTED

This case has its origin in an arrest and detention carried out during the early morning hours of April 23, 1977 from 12:30 A.M. to 2:45 A.M.. Petitioner's complaint (A-1 to A-8 of the Appendix) alleges on that day, respondents, 3 uniformed policemen, employed by the City of Philadelphia and empowered by the laws of the Commonwealth of Pennsylvania, accosted him on the street in front of his home using abusive and threatening language, while demanding to see his identification, as he was lawfully standing on the street. The complaint further stated that the plaintiff-petitioner suffered some physical pain while being grabbed and unnecessarily restrained by one of the policemen, even though he did not resist in any way and reluctantly showed the policemen his identification in the form of his car registration card. The petitioner was then taken against his will to a police station

and detained there for about 2 hours. He was released at about 2:45 A.M. and made to walk nearly 3 miles back to his home in the wee hours of the morning, since no transportation was available due to a strike in the City, and the policemen refused to drive him back to his home.

On August 1, 1977, the petitioner brought suit in Federal District Court. In addition to the allegations above, his complaint asserted that the arrest and detention were effected without a warrant and with no criminal charges placed against him, and that unreasonable force was employed in making the arrest; fairly read, it alleges as well that the arrest was made without probable cause. After the arrest, the petitioner acquired the official public record of the incident which stated untrue libelous matter concerning the petitioner and the arrest. It stated, *inter alia*, that the petitioner "...was taken to 26th Police District for investigation. Mr. Grey appears to be paranoid, has a persecution problem. He explained his problem to police and was re-

released." Petitioner claimed to have suffered great humiliation, embarrassment and mental suffering as a result of the policemen's unlawful conduct, and sought \$500,000. in compensatory damages and \$500,000. in punitive damages from the City of Philadelphia, their employer, and the 3 named policemen defendants.

The defendants filed their motion to dismiss the complaint on September 12, 1977, whereupon the plaintiff filed his response and his amended complaint appearing at A-1 to A-8 of the Appendix. Judge Becker denied defendants motion to dismiss, appearing at A-10 of the Appendix, on April 3, 1978, which was also the same day Judge Becker granted plaintiff's amended complaint, appearing at A-9 of the Appendix.

As this law suit progressed, pretrial discovery was completed, and the District Court Judge ordered the parties to file their pretrial memoranda which the defendants refused to do. The District Court Judge indicated that a trial on the merits would pro-

ceed shortly after a pretrial conference in the District Court Judge's chambers in 1981. Shortly thereafter, defendants-respondents filed a motion for summary judgment on July 14, 1981 which was basically a carbon copy of their initial motion to dismiss which had been denied back in 1978. This new motion for summary judgment was granted on August 4, 1981, appearing at A-11 of the Appendix, which dismissed the entire complaint as it then stood in the form of the amended complaint (A-1 to A-8). The District Court's dismissal of the complaint on a weak summary judgment motion was totally unreasonable and manifestly unjust. The plaintiff-petitioner then appealed that decision of the District Court to the Third Circuit Court of Appeals, wherein the District Court judgment was affirmed at A-12 of the Appendix without any opinion or reason given by the Third Circuit. The petitioner then filed his petition for rehearing en banc with the Third Circuit which was denied, without any opinion given

either for the denial (A-14 of the Appendix). It should also be noted by this Court that the same District Court Judge Becker was appointed to the Third Circuit shortly after the petitioner appealed to the Third Circuit for review of the District Court judgment.

#### REASONS RELIED ON FOR GRANTING THE WRIT

THE THIRD CIRCUIT COURT OF APPEALS HAS DECIDED A QUESTION OF IMPORTANCE IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT AND HAS SANCTIONED THE DEPARTURE BY THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

With respect to jurisdiction in the district court, the court must view well pleaded material allegations of the complaint in light most favorable to plaintiff with his alleged facts accepted as true pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. This Court has ruled in Bell v. Hood, 327 U.S. 678, 684, 66 S.Ct. 773, 777, 90 L.Ed.2d 939 (1946), that when legal rights have been invaded and a federal statute provided a general right to sue for such

invasion, federal courts may use any available remedy to make good the wrong done. A remedy is available to the petitioner in the district court for deprivation of his Fourth Amendment rights by the policemen defendants-respondents acting under color of State law by virtue of 28 U.S.C. § 1343(a)(3) and is available against States by virtue of the due process clause of the Fourteenth Amendment. Wolf v. Colorado, 338 U.S. 25 (1949); Ker v. California, 374 U.S. 23 (1963) and Terry v. Ohio, 392 U.S. 1, 16 (1968).

Fourth Amendment violations by federal agents were actionable by a plaintiff for money damages as in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). In Gerstein V. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54, on remand 511 F.2d 528 (1975), this Court decided there was no bar to claims for federal relief for warrantless arrest. The petitioner in this case was arrested with-

out a warrant and should be granted federal remedy. This case is a substantial violation of petitioner's Fourth Amendment rights, and it was previously decided by this Court that substantiality of a constitutional question is relevant in determining jurisdiction under 28 U.S.C. § 1343(3) in Finch v. Weinberger, 425 U.S. 967, 96 S.Ct. 2162, 48 L.Ed.2d 791, (1976). Furthermore, Kenosha v. Bruno, 412 U.S. 507, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1973), held that a cause of action is available against a municipal corporation in the absence of 42 U.S.C. § 1983, if a cause of action is stated under 28 U.S.C. § 1331 or § 1343, as it is stated in the petitioner's amended complaint (A-3: ¶ 7 of the Appendix).

This case also included pendent State claims under the same cause of action and falls within the ambit of this Court's decisions in Hagans v. Levine, 415 U.S. 528 (1974) and United Mine Workers v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966), where the plaintiffs were allowed to be heard on the pendent State claims

where the Constitution was violated.

By ignoring the above arguments, the District Court and the Third Circuit have sanctioned the arbitrary arrest and detention of the petitioner by Philadelphia policemen and have denied him redress of his grievance in the federal court for serious Fourth Amendment violations.

#### CONCLUSION

For these reasons, which include serious Fourth Amendment violations and the important question of law, a Writ of Certiorari should issue to review the judgment of the Third Circuit Court of Appeals.

Respectfully submitted,

Joseph Michael Grey  
JOSEPH MICHAEL GREY  
PETITIONER: PRO SE  
2447 East Letterly Street  
Philadelphia, Pennsylvania 19125  
Telephone: (215) 673-2999

## CERTIFICATE OF SERVICE

I hereby certify that I, Joseph Michael Grey, the Petitioner in this case, have mailed three true and correct copies of the foregoing Petition for Writ of Certiorari to the attorney of record: Jill A. Douthett, Esq., 1580 Municipal Services Building, 15th Street & J.F.Kennedy Boulevard, Philadelphia, Pennsylvania 19107, for Respondents on this 30th day of December, 1982 by United States Certified Mail with return receipt requested.

BY: Joseph Michael Grey

JOSEPH MICHAEL GREY  
PETITIONER: PRO SE

2447 East Letterly Street  
Philadelphia, Pa. 19125  
Phobe: (215) 673-2999

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|   |   |              |
|---|---|--------------|
| JOSEPH MICHAEL GREY,<br>Plaintiff         | : | CIVIL ACTION |
| vs.                                       | : |              |
| CITY OF PHILADELPHIA,<br>Defendant        | : |              |
| and                                       | : |              |
| PHILADELPHIA POLICE DEPT.,<br>Defendant   | : |              |
| and                                       | : |              |
| ROLAND LUCIER, BADGE #3679,<br>Defendant  | : |              |
| and                                       | : |              |
| THOMAS WHALEN, BADGE #4300,<br>Defendant  | : |              |
| and                                       | : |              |
| PERRY PRESSMAN, BADGE #9358,<br>Defendant | : | NO. 77-2641  |

AMENDED COMPLAINT

Jury Trial Demanded

Plaintiff claims of Defendants, and each of them the sum of One Million Dollars (\$1,000,000.) in damages upon the following causes of action:

1. Plaintiff is a citizen and resident of the

Commonwealth of Pennsylvania.

2. Defendant, CITY OF PHILADELPHIA, is a municipality incorporated by the Commonwealth of Pennsylvania and maintains in the course of its authority a police department.

3. Defendant, PHILADELPHIA POLICE DEPARTMENT, is a duly authorized department of the City of Philadelphia responsible for the peace and safety of its citizens.

4. Defendant, ROLAND LUCIER, BADGE #3679, at all times mentioned hereinafter was a member of the City of Philadelphia Police Department assigned to the 26th District Police Station.

5. Defendant, THOMAS WHALEN, BADGE #4300, at all times mentioned hereinafter was a member of the City of Philadelphia Police Department assigned to the 26th District Police Station.

6. Defendant, PERRY PRESSMAN, BADGE #9358, at all times mentioned hereinafter was a member of the City of Philadelphia Police Depart-

ment assigned to the 26th District Police Station.

7. Jurisdiction is conferred upon this Court by virtue of Articles IV and XIV of the Bill of Rights of the United States Constitution and Title 28, Sections 1331 and 1343 of the United States Code, and that the amount in controversy is in excess of Ten Thousand Dollars (\$10,000.00).

8. On April 23, 1977 at about 12:30 A.M., plaintiff was lawfully standing on the street where he usually parks his motor vehicle in close proximity to his house at 2447 East Letterly Street, Philadelphia, Pennsylvania, when two policemen, defendants, ROLAND LUCIER, BADGE #3679 (hereafter called Lucier) and THOMAS WHALEN, BADGE #4300 (hereafter called Whalen), drove their police car #264 close to where plaintiff was standing. Defendants, Lucier and Whalen, got out of their car and approached plaintiff in a menacing and portentous manner causing plaintiff fear and apprehension. When plaintiff asked what defendants, Lucier and

Whalen, wanted, they responded with vulgar words and demanded that plaintiff show his identification. Plaintiff thereupon showed his registration to his motor vehicle to defendant, Lucier, and stated that he didn't like defendant's attitude, whereupon defendant, Whalen, threatened plaintiff with a verbal threat of taking plaintiff around the corner and beating his skull with his night stick. The said verbal threat by defendant, Whalen, caused plaintiff nervous upset and fear of imminent serious bodily injury. Plaintiff was then grabbed by the arms and physically restrained from free movement by defendants, Lucier and Whalen, against plaintiff's will. Plaintiff made no effort to escape or resist during the entire fracas. Defendant, Lucier, told plaintiff, "You're under arrest," whereupon plaintiff asked what crime he was being charged with, but defendant, Lucier, answered, "We'll tell you when we get you to the Station." Plaintiff then asked to make a phone call, but his request was denied.

Defendant, Whalen, then bent plaintiff's arm back causing severe pain to plaintiff for several days thereafter. Defendant, PERRY PRESSMAN, BADGE #9358 (hereafter called Pressman), drove up to where plaintiff and defendants, Lucier and Whalen, were standing, in an enclosed police van. All three defendants, Lucier, Whalen, and Pressman, assisted each other in a frisk and search of plaintiff's papers and valuables by physically removing same from plaintiff's pockets. Plaintiff was then taken to the 26th District Police Station in the said police van driven by defendant, Pressman. At all times within the said Police Station, plaintiff's free movement was restricted by the defendants. Plaintiff continually requested to make a phone call and be told what criminal charges were being placed against him, but defendants refused to allow him to make a phone call or tell him what criminal charges were being placed against him. Plaintiff was told by defendant, Lucier, that he would be

put in a cell over night and be charged in the morning. Plaintiff was permitted to speak with Corporal Vanore of the 26th District Police Station after plaintiff insisted on speaking to someone in authority in said Police Station. When plaintiff informed the said Corporal of the aforementioned details, the Corporal had him released from custody; plaintiff was then told he had to walk home from said Police Station (public transportation was not operating at the time due to a strike). Plaintiff's false imprisonment lasted for slightly more than two hours; he was released from said Police Station at about 2:45 A.M. on the morning of April 23, 1977.

9. The aforementioned statements constitute a cause of action by the plaintiff, for which the plaintiff seeks damages; defendants' tortious action against plaintiff included false imprisonment and assault and battery arising from this single cause of action. Plaintiff has and probably will continue

in the future to suffer nervous upset and shock and mental anguish due to the aforestated actions of defendants. Plaintiff has suffered physical pain and discomfort as a result of the aforesaid actions of defendants for which plaintiff seeks damages due to lost income from not being able to attend to his duties as an independent public accountant for about two weeks after the date of the said incident.

10. Plaintiff subsequently obtained an "Extract of Police Report of Incident or Offense" (hereafter called Extract); said Extract has been in the past, is now, and probably will continue to be in the future available for inspection by the public and government agencies. The said Extract is herewith attached, and the statements made therein concerning plaintiff being "paranoid" and having "a persecution problem" are altogether false and have no basis in fact. Plaintiff has no history of mental illness. The said statements in the attached Extract are damaging to the plaintiff's good name and rep-

utation in the community and holds plaintiff up to ridicule and contempt. Defendants' tortious action against plaintiff is libel, arising from the single cause of action as stated in paragraph 8 of this Complaint and inseparably connected to it, for which plaintiff seeks damages.

Wherefore, plaintiff prays this honorable court to award compensatory damages in the amount of Five Hundred Thousand Dollars (\$500,000.00), as well as punitive damages in the amount of Five Hundred Thousand Dollars (\$500,000.00), with interest and costs.

/s/ Joseph Michael Gray

Plaintiff Pro Se

Note: This Amended Complaint was filed on September 15, 1977, and Judge Becker granted the Amended Complaint on April 3, 1978.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH MICHAEL GREY : CIVIL ACTION

v. :  
CITY OF PHILADELPHIA, :  
PHILADELPHIA POLICE DEPT., :  
ROLAND LUCIER, :  
THOMAS WHALEN, and :  
PERRY PRESSMAN : NO. 77-2641

ORDER

AND NOW, to wit, this 3rd day of April, 1978,  
upon consideration of the Motion to Amend the  
Complaint by Plaintiff, Joseph Michael Grey, and  
the Memorandum of Law in support thereof, the  
Motion is granted and it is

ORDERED that the Complaint against Defendants,  
City of Philadelphia, Philadelphia Police Dept.,  
Roland Lucier, Thomas Whalen and Perry Pressman,  
be hereby amended.

/s/ Edward R. Becker

Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH MICHAEL GREY :  
v. :  
CITY OF PHILADELPHIA, et al : NO. 77-2641

ORDER

BEFORE E.R. BECKER

AND NOW, this 3rd day of April, 1978, it is ORDERED that Defendants' motion to dismiss, except as to the "Phila. Police Dept." is denied. The motion is granted as to the "Phila. Police Dept." which is dismissed as a party. Jurisdiction will be retained over the pendent claims.

BY THE COURT:

/s/ Edward R. Becker

Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
JOSEPH MICHAEL GREY : CIVIL ACTION  
v. :  
CITY OF PHILADELPHIA, et al. : NO. 77-2641

ORDER

AND NOW, this 4th day of August 1981, after hearing, and for the reasons set forth in the bench opinion delivered this day, it is ORDERED that defendants' motion for summary judgment is hereby GRANTED, and plaintiff's complaint is DISMISSED.

FILED: August 5, 1981

ENTERED: August 5, 1981

Signed BY THE COURT: EDWARD R. BECKER,  
Judge.

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 81-2543

---

JOSEPH MICHAEL GREY,

Appellant

v.

CITY OF PHILADELPHIA, PHILADELPHIA  
POLICE DEPARTMENT, ROLAND LUCIER,  
BADGE #3679, THOMAS WHALEN, BADGE #4300,  
PERRY PRESSMAN, BADGE #9358

(Civil No. 77-2641 - E.D.Pa.)

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Submitted: September 13, 1982

Filed: September 14, 1982

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BEFORE: SEITZ, Chief Judge, ROENN and GARTH,  
Circuit Judges.

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JUDGMENT ORDER

After consideration of the contentions raised by  
appellant, it is

ADJUDGED AND ORDERED that the judgment  
of the district court be and is hereby affirmed.

Costs taxed against appellant.

A-13

By the Court,

/s/ Seitz

Chief Judge

ATTEST:

/s/ Sally Mrvos

Clerk of the Court

DATED: SEP 14 1982

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 81-2543

JOSEPH MICHAEL GREY,

Appellant

v.

CITY OF PHILADELPHIA, PHILADELPHIA  
POLICE DEPARTMENT, ROLAND LUCIER,  
BADGE #3679, THOMAS WHALEN, BADGE #4300,  
PERRY PRESSMAN, BADGE #9358

(Civil No. 77-2641 - E.D.Pa.)

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, ALDISERT, ADAMS,  
GIBBONS, ROENN, HUNTER, WEIS, GARTH, HIG-  
GINBOTHAM, SLOVITER, and BECKER, Circuit Judges  
es

Submitted: September 28, 1982

Entered: October 15, 1982

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ SEITZ

Chief Judge

Dated: October 15, 1982

**U.S. Constitution: Fourth Amendment.**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**U.S. Constitution: Fourteenth Amendment.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**28 U.S.C. § 1331.**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

**28 U.S.C. § 1343 (a) (3).**

- (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.
- (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right privilege or immunity secured by the Constitution of the

United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States. . .

Federal Rules of Civil Procedure: Rule 12 (b) (6).

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . .(6) failure to state a claim upon which relief can be granted, . . .